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# Final Action Plan for Regulatory Reform at MassDEP

March 5, 2012

## I. Statement of Purpose

This document is the Final Action Plan for Regulatory Reform at the Massachusetts Department of Environmental Protection (MassDEP). This plan is first and foremost an attempt to strategically cope with the budget cuts MassDEP has suffered in recent years. Since 2002, MassDEP's budget has been significantly reduced, and staffing has been cut commensurately, from 1200 full time equivalents to approximately 840 today. Yet during that same period MassDEP's responsibilities have only increased through efforts to address emerging environmental contaminants of concern and passage of new legislation such as the Global Warming Solutions Act and the Massachusetts Mercury Management Act. As a result, the agency's resources are now out of alignment with its responsibilities. This deficit jeopardizes MassDEP's ability to perform its vital functions, and to maintain its position as a national leader in environmental protection.

In addition, and as a result of the budget constraints faced by state and local agencies across the Commonwealth, the Patrick-Murray Administration and the Massachusetts Legislature have made clear that our current budget constraints require us to think and act differently and that regulatory reform is a high priority in the Commonwealth. This Action Plan specifically addresses the agency's obligations under Section 71 of Chapter 240 of the Acts of 2010 ("An Act relative to economic development reorganization"), which requires state agencies to review their regulations retrospectively to ensure they remain appropriate and current.<sup>1</sup> The current staffing levels at MassDEP are inadequate to assure municipalities and the public that we will maintain the technical outreach and assistance they currently rely on, or to maintain compliance and enforcement levels that are sufficient to protect the environment and impose a level playing field for Massachusetts businesses. MassDEP has already fallen behind on certain important federal commitments for surface water and air quality activities due to inadequate staffing resources. Regulatory reform is not only necessary to address these serious existing and potential future shortfalls, but it will also help ensure that MassDEP is well-positioned to facilitate Massachusetts' economic recovery by meeting the Governor's commitment to permitting at the speed of business as permit volumes rebound from recessionary lows.

Finding efficiencies in the way we operate is not a novel idea, and many reforms have already been made at MassDEP. This initiative was expressly intended to expand upon the successful efforts launched by MassDEP in 2007 to streamline certain permitting and appeals processes and ensure that MassDEP's permits are issued within six months as directed by Governor Patrick. Through that effort, MassDEP has already streamlined significant aspects of the wetlands appeals process, certain air permit approvals, and groundwater discharge permitting. Consequently, this plan does not contain any quick-fix solutions, nor will it solve MassDEP's long-term budget needs in and of itself.<sup>2</sup> Nonetheless, MassDEP believes this is the

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<sup>1</sup> In addition, a bill currently pending in the Legislature, S.B. 1940 "An Act to Improve the Administration of State Government and Finance", would require periodic review of the efficiency of agencies and the necessity of each of the activities of such agency.

<sup>2</sup> Regulatory reform is only one part of the agency's overall strategy to better align MassDEP's resources with its responsibilities. MassDEP is also in the process of undertaking strategic internal restructuring efforts that will help modernize the agency's twenty year old management structure, as well as pursuing a comprehensive plan to upgrade and reinvent the agency's

broadest-based effort at comprehensive regulatory reform in the agency's recent history. This plan presents a package of proposed reforms that MassDEP believes are individually appropriate, and that will collectively allow us to shift resources to higher priority activities that we are currently falling behind on.

## II. MassDEP's Public Process

In recognition of the budget realities outlined above, Commissioner Kimmell asked MassDEP to undertake a comprehensive effort to identify and implement reforms to existing regulations, policies and practices that will allow the agency to reduce staff time spent on these activities while maintaining its high standards for environmental protection.<sup>3</sup> This work commenced in April, 2011, and MassDEP spent approximately six months canvassing its own staff and working closely with outside stakeholders to develop a draft plan for initiating targeted reforms that will improve our operations while maintaining, and in some cases improving, environmental outcomes. This solicitation effort included establishing an external Regulatory Reform Working Group consisting of representatives of environmental advocacy organizations, municipal officials, regulated businesses, and others to serve as key advisors. In addition, MassDEP held discussion forums with a number of other external stakeholders (including the Massachusetts Health Officers Association, the Boston Bar Association, MassDEP's Superfund Advisory Committee, and a group of prominent environmental advocacy organizations). The Commissioner's Draft Action Plan for Regulatory Reform at MassDEP was issued on October 24, 2011, and MassDEP accepted public comments on its contents until December 5, 2011. In addition, MassDEP staff continued to target outreach to agency stakeholders in an effort to ensure a robust discussion of these important public policy issues.

## III. Public Comments Received

MassDEP received approximately one hundred individual or organizational comments on the Commissioner's Draft Action Plan. MassDEP greatly appreciates this high level of public engagement and would like to thank commenters for their detailed and thoughtful responses. These comments have helped shape the proposed reforms contained in the final Action Plan, and they will be extremely useful to MassDEP as it moves from conceptual discussion of the topics outlined in this Action Plan to implementation of specific reforms and as we draft regulatory changes. The comments have been distributed to project leads within MassDEP who are charged with implementing this Action Plan, and they will provide the starting basis for crafting regulatory and policy changes that are responsive to public input.

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outdated technological capabilities. MassDEP believes that its efforts to rebuild its information technology infrastructure will, in particular, represent the greatest potential for finding significant efficiencies at the agency. However, that effort is a multi-year project that will require significant funding to be successful, and thus finding shorter term ways to boost productivity is critical.

<sup>3</sup> The Scope of Work that Commissioner Kimmell issued for the Regulatory Reform Initiative can be found on MassDEP's website at: <http://www.mass.gov/dep/about/regrefin.htm>

The majority of comments received were supportive of MassDEP's efforts to address its current staffing shortages in a thoughtful way, and of streamlining its processes for all stakeholders. A significant number of comments on some of the proposed wetlands program reforms were received from Conservation Commissions, and individual members of those Commissions or their staff. MassDEP also received comments from regulated industries or sectors, individual businesses, and consultants or attorneys for regulated entities. Finally, MassDEP received many comments from environmental advocates and watershed associations. All of the public comments have been made available on MassDEP's website at: <http://www.mass.gov/dep/about/priorities/regreform.htm>

MassDEP received several comments expressing concern that certain reform proposals could disparately affect environmental justice communities if they resulted in reduced public participation or facility compliance oversight. MassDEP reiterates that the regulatory reform initiative is premised on maintaining substantive environmental protection standards and public engagement processes, and we commit to ensuring that these reforms do not result in additional burdens on already stressed communities. In fact, resources freed up from the increased efficiency in permitting and compliance assurance activities will be directed toward addressing the most significant environmental impacts affecting all communities, including environmental justice communities. However, Mass DEP will continue to seek input from environmental justice community representatives during the regulatory development process and consider the proposals' potential effect on those communities.

As noted above, individual comments will be considered and addressed by the program staff in charge of implementing the selected reforms. While MassDEP does not expect to provide written responses to individual commenters, all of the comments will be evaluated and considered by the agency as it moves forward to implement this Action Plan.

#### IV. Overview of the Reforms Selected

Throughout the process MassDEP has adhered to several guiding principles established by the Commissioner:

- Proposed reforms will not weaken or undermine environmental protection standards. Changes that reduce direct oversight will be coupled with robust compliance and enforcement mechanisms.
- Proposed regulatory or permitting changes are aimed primarily at helping MassDEP manage its responsibilities within our current staffing levels, and every proposed reform measure will result in some time savings for the agency.
- All identified reforms can be implemented directly by MassDEP, without the need for legislative changes.
- None of the proposed reforms will transfer new responsibilities to municipalities, as our cities and towns are also strained by budget decreases.
- None of the proposed reforms will alter our obligations under our federal funding agreements with the United States Environmental Protection Agency (U.S. EPA) and therefore proposed reforms are largely concentrated on "state-only" programs such as wetlands, waterways, wastewater, and solid waste.

In addition, MassDEP would like to highlight several other aspects of the reforms that have been selected:

- None of the proposed reforms are intended to reduce public process, and no reforms to appeals processes have been proposed. MassDEP is committed to maintaining opportunities for public involvement and to upholding established rights to citizen appeals. In addition, MassDEP has already made significant success in reducing timelines for adjudicatory appeals, including wetlands appeals in particular, as part of the agency's prior streamlining efforts.
- Many of the proposed reforms incentivize better environmental outcomes by reducing permitting procedures for environmentally beneficial projects or for avoiding areas with sensitive environmental resources.
- Many of the proposed reforms seek to eliminate duplication in current permitting reviews. Some of the proposed ideas eliminate duplication within MassDEP's own programs, and several others reduce duplication with municipal approvals.
- Several of the selected reforms seek to reduce direct staff oversight of activities that are routine and that do not pose the most significant environmental protection concerns. This will allow MassDEP staff to instead focus on those activities that deserve the most scrutiny. As noted above, and throughout this Action Plan, changes to reduce direct oversight (e.g., moving from an individual to a general permit process and shifting oversight to external third parties) will be coupled with robust oversight and enforcement measures.

#### V. Action Plan for Regulatory Reform

The specific targeted regulatory reforms MassDEP will undertake are described below. As MassDEP moves forward with these plans, additional specific details relating to each item will need to be developed. In most cases formal regulatory changes will be required and in some cases formal policies will be established or revised. Stakeholders will therefore have additional opportunities to review and comment on each of these specific proposals, including through the usual notice and comment procedures for all regulatory changes under M.G.L. c. 30A. In addition, individual MassDEP programs will conduct additional stakeholder outreach as the regulatory and policy development process moves forward, and in most cases those discussions have already begun.

In order to ensure that existing resources constraints are addressed as quickly as possible, MassDEP will endeavor to finalize the changes by the beginning of Fiscal Year 2013 (July 1, 2012). This will help MassDEP to move into Fiscal Year 2013 better positioned to manage its regulatory responsibilities and maintain environmental protection standards. Although MassDEP does not anticipate being able to re-assign large numbers of employees as a result of these reforms, the efforts will allow MassDEP to more strategically shift resources to the highest priorities across the agency.

## **A. Wetlands, Waterways and Coastal Resources**

### **1. Coastal /Dredging Programs: Permit Consolidation**

To reduce time spent by MassDEP personnel reviewing and approving the same information or aspects of projects under three separate MassDEP regulatory programs (Wetlands Protection Act, Chapter 91, and 401 Water Quality Certifications (WQC)), and to increase clarity for, and reduce time spent by, applicants/project proponents in submitting repetitive information, MassDEP will develop a common permit application that will allow applicants to reduce the submission of redundant information. In addition, MassDEP will reduce regulatory overlap between the programs by making changes to clarify when certain types of projects (e.g., utility maintenance, coastal engineering structures below mean high water) are “Adequately Regulated” by another program. This would involve, for example, allowing a 401 WQC permit-by-rule if the applicant gets an Order of Conditions/Superseding Order of Conditions (OOC/SOOC), Chapter 91 Permit, etc. All substantive review standards and protected resource interests will be maintained. MassDEP is currently in the process of identifying the appropriate scope of this permitting consolidation. MassDEP intends to start by consolidating permits for dredging projects and will explore options for permit consolidation on other project types as a second phase.

### **2. Chapter 91 Licensing: Allow Concurrent Processing with MEPA and Wetlands Approvals**

To reduce overall time for both project applicants and MassDEP staff, MassDEP proposes to change its current regulations to allow the Chapter 91 (c. 91) licensing process to run concurrently with Massachusetts Environmental Policy Act (MEPA) review, and also allow a c. 91 License to be issued before a final Wetlands Order of Conditions is obtained. This will reduce MassDEP permitting time and duplicative effort, while facilitating engaged public involvement by concentrating public processes to take place during a more concentrated period of time. No other permitting process contains this time restriction with respect to MEPA, and there is no clear reason to proceed differently under Chapter 91. This proposed change will not alter the MEPA regulatory timeframes for action (e.g., no Chapter 91 License shall be issued until after the Secretary’s Certificate on the Final Environmental Impact Report). This change also would not require applicants to pursue c. 91 licensing during the MEPA review process, but does allow for that option at the election of the applicant.

### **3. Chapter 91 Licensing: Establish a Policy for License Terms**

MassDEP will develop a written policy to guide project applicants and DEP staff in establishing license terms under c. 91 for non-water dependent uses. Currently, license terms are individually negotiated. By establishing expectations in policy, the proposal will reduce DEP staff time spent on such negotiations. The proposal will also allow for greater public input on the topic of license terms because the current negotiations take place largely outside of the public view. To ensure sufficient public benefits will be achieved for specified terms, DEP will take public comment before any policy is established.

#### 4. Chapter 91 Licensing: General License for Small Docks & Piers

Chapter 91 was recently amended to allow DEP to create a general license for non-commercial small-scale docks, piers and similar structures. Implementing this important statutory authorization will save scarce staff time in DEP's waterways program and allow the agency to focus more resources on larger projects, including non-water dependent development projects, which deserve greater scrutiny than small-scale non-commercial structures. It will also reduce the regulatory burden on small projects. MassDEP is currently working to implement this recent statutory amendment, including developing appropriate conditions for eligible projects and performance standards.

#### 5. Wetlands: Targeted Review by DEP

In order to most effectively deploy the significant agency resources currently spent on Wetlands Protection Act (WPA) permitting, DEP will prioritize a variety of program activities, including immediate issuance of file numbers; increased focus on Superseding Orders of Condition; and increased priority based on significance of wetlands resource impacts. This will reduce agency time spent on lower-value added tasks and will reduce delays for project proponents and Conservation Commissions.

MassDEP is aware that Conservation Commissions are facing their own resource challenges in many areas of the state, and that Conservation Commissions rely heavily on MassDEP for technical and regulatory assistance. MassDEP is committed to maintaining current levels of municipal assistance, and will prioritize increasing these activities when resources allow. MassDEP will develop an internal policy that will guide staff efforts to review wetlands submittals, but this policy will not prevent MassDEP staff from supporting Conservation Commissions that seek and require MassDEP's assistance. MassDEP is aware that Conservation Commissions in smaller communities—particularly in western Massachusetts—are often understaffed and may need greater assistance from MassDEP than Conservation Commissions in larger communities. MassDEP's policy will address this consideration.

MassDEP will prioritize its WPA efforts in the following ways:

- DEP will assign WPA File Numbers immediately upon submittal of a Notice of Intent (NOI) to a local Conservation Commission. This will allow Conservation Commissions to act without needing to wait for DEP review of the NOI, which is increasingly difficult to do in a timely manner given staffing constraints.
- DEP will limit its review of NOIs and its oversight on local actions in order to concentrate resources on cases in which there are appeals to DEP (SOOCs). DEP intervention or participation in the local proceeding will be unusual and reserved for cases where there are particularly sensitive resources at issue. As noted above, DEP will continue to provide technical and regulatory assistance to the local conservation commissions and others via the Wetlands Circuit Rider program and other activities.
- DEP will also strategically deploy its SOOC review efforts to concentrate on projects with significant resource area impacts, and conduct streamlined review of projects that solely impact the buffer zone, or that involve minor residential alterations.

By concentrating DEP efforts in this manner, DEP will ensure it has adequate resources to give the appropriate level of scrutiny based on potential for environmental harm.

6. Wetlands: Buffer Zone Permit Streamlining

MassDEP will establish a general permit or other similar regulatory provisions to standardize approvals for certain activities that are proposed for the buffer zone to inland wetlands, focusing in particular on activities within the outer fifty feet (50') of the buffer zone. This proposal will reduce DEP staff time spent on SOC review for buffer zone cases thus freeing up agency personnel to focus on protecting higher-value wetlands resources, and it has the potential to benefit the environment by providing incentives for applicants to concentrate activity greater than 50' from the resource area. It will also save time for project proponents and for Conservation Commissions. This concept was previously deployed but was ultimately deemed unsuccessful because categorical restrictions limited the universe of eligible projects to a very small category. DEP will revisit that effort with an eye towards expanding the applicability of the general permit or other standard approval mechanism from the prior iteration. MassDEP will also expand the existing exemptions for certain Minor Activities within the buffer zone to improve efficiency and reduce process for routine activities with little potential to impact wetlands such as certain utility-related activities and activities ancillary to roadwork. MassDEP is committed to working closely with stakeholders to design a regulatory process that will effectively streamline the permitting process for certain activities while maintaining important protections for wetland resource areas and buffer zones.

7. Wetlands: Exemptions for Regulated “Resources” Created by Stormwater Management Structures

MassDEP will propose regulations to exempt wetlands “resource areas” created by stormwater management structures (e.g. man-made stormwater retention basins) if the stormwater system meets DEP’s performance standards. This will reduce agency time spent and streamline processes for external stakeholders by reducing the need to address these man-made stormwater structures under the more time-consuming process for regulated resource areas.

8. Expedited Permitting for Ecological Restoration Projects, e.g. Dam Removal, Inlet Widening; Stream Daylighting, etc.

In coordination with the Department of Fish and Game (DFG), MassDEP has recently launched an aquatic restoration regulatory working group to identify ways to make the regulatory process less complex and more efficient for pro-active ecological restoration projects such as dam removals, culvert replacements, inlet widening, stream daylighting, etc. This will provide expedited permitting for these projects that will affirmatively enhance the environment while decreasing the amount of agency time needed to review and issue approvals and simplifying proponent processes. This effort will build on prior successful efforts to streamline permitting for dam removal projects. MassDEP expects that this working group will identify changes to the Wetlands Protection Act regulations and, potentially, other regulations in the next couple of months.



#### 9. Wetlands: Limited Project Status for Renewable Energy Projects

MassDEP will propose changes to create clear, categorical standards for certain renewable energy projects by expanding the categories of “limited projects” in the Wetlands Protection Act regulations. This change will benefit the environment by creating a more streamlined and predictable permitting pathway for projects that help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and streamlining project proponent processes. Renewable Energy Projects will be defined as projects that qualify under the state’s Renewable Energy Portfolio Standards (RPS) and Alternative Energy Portfolio Standards (APS). MassDEP is currently working to identify the range of project types that should be eligible for this new provision. Emphasis will be placed on whether the type of project by its nature is likely to require alterations to wetland resources (e.g., if the project is water-dependent, or if wetland crossings or other temporary wetlands alterations are needed to access inland sites), and conversely, projects that can feasibly be located away from wetlands will not be included.

#### 10. Wetlands, Chapter 91 & 401 Water Quality Certifications: Improved Regulatory Mechanisms for Approving New Energy Technologies -- Other New Technologies

MassDEP will propose changes to one or more of the coastal permitting programs (Wetlands, c. 91, 401 WQC) to provide opportunities for approval of innovative projects, particularly for clean energy projects, on a “pilot” basis. This will help improve air quality, reduce greenhouse gas emissions and boost the green economy, while reducing MassDEP permitting time and establishing predictable review and approval pathways for project proponents. In MassDEP’s experience, it can be difficult to review and approve proposals for new technologies or pilot projects. This is because these projects can have impacts that are different from those types of impacts contemplated when regulatory performance standards were drafted, or impacts that are unknown with a typical degree of certainty. Rather than prohibiting projects with uncertain impacts to go forward at all, MassDEP will concentrate on allowing limited pilot projects to proceed with appropriate monitoring and reporting safeguards to prevent damage to the environment.

### **B. Wastewater**

#### 11. Sanitary and Industrial Wastewater: Eliminate Sewer Extension & Connection Approval

Under existing regulations at 314 CMR 7.00, connections to and extensions of a local sewer collection system require a permit from either a local Department of Public Works or Sewer Department prior to applying to DEP for approval. The DEP approval typically does not apply different criteria nor add significantly different conditions than the local permit. This proposal would therefore eliminate the current certification and permitting for all sanitary and industrial connections and extensions of the public sewer systems.

We received comments raising concerns that eliminating sewer connection permits could undermine efforts to reduce/eliminate illicit sewer connections and the infiltration of clean groundwater into sewer lines – both of which overload treatment plant capacity. However, through DEP’s operation and maintenance regulatory authority (314 CMR 12.00), we will shift

resources to more critical public health and environmental issues associated with wastewater treatment and collection systems, such as infiltration/inflow (I/I), capacity issues at the treatment facility and within the collection system, sanitary sewer overflows and industrial pretreatment programs. In order to accomplish this, DEP will revise the operation & maintenance regulations to:

- require an I/I identification and elimination program as part of municipal operation and maintenance procedure;
- move sanitary sewer overflow reporting requirements from the sewer regulations into 314 CMR 12.00;
- require municipalities to develop offset programs for systems or portions of a system that experience chronic overflows;
- incorporate provisions DEP's Policy "Managing Infiltration and Inflow (I/I) in MWRA Community Sewer Systems" into the regulations at 314 CMR 12.00 so that individual projects will continue to be required to mitigate I/I when establishing new connections to the system.

The resource savings associated with eliminating these permit programs will enable MassDEP to provide enhanced assistance to municipal and other system operators in order to address the program requirements noted above.

MassDEP acknowledges that the elimination of these permit categories will, potentially, result in a small number of projects no longer being required to file an Environmental Notification Form under the MEPA regulations. MassDEP also acknowledges that the current right to appeal these permits would not exist if the permits are eliminated. However, based on the numbers of such permits issued by MassDEP in recent years, and based on MassDEP's general experience with these projects, MassDEP believes that in practice only a few projects will forgo MEPA review due to this change. In addition, MassDEP notes that it has only had one sewer permit appeal in the past three years. The ability to appeal local permits will still be available to the same extent it currently exists.

With respect to toxics and pre-treatment from industrial sources, MassDEP will improve its environmental protection by ensuring that industrial facility inspections include wastewater pre-treatment compliance audits that will evaluate the industrial discharges and pre-treatment permits (which are required to specify all compounds that may be discharged), and review monitoring data to confirm compliance.

## 12. Wastewater Title 5: Innovative/Alternative Program – 3<sup>rd</sup> Party Review

MassDEP proposes to streamline the review of "innovative and alternative" Title 5 (septic system) wastewater treatment technologies by placing greater reliance on third parties in researching, reviewing and vetting new treatment technologies. Specifically, DEP will explore options for relying on existing organizations or services that are already performing this activity (such as Barnstable County's Massachusetts Alternative Septic System Test Center, in Sandwich, Massachusetts), rather than duplicating the work with MassDEP personnel. This will allow DEP to save scarce resources while developing partnerships to provide streamlined and effective review for environmentally beneficial treatment technologies. DEP would still play a

role in setting standards and provide some level of oversight technology review. DEP will also develop an auditing protocol ensure results are demonstrated in the field. Authority for case-by-case approval of site-specific use of innovative and alternative systems will continue to reside with the local boards of health.

### 13. Wastewater Title 5: Eliminate Duplicative State Approvals

MassDEP currently permits Title 5 septic system variances and “shared system” approvals which are also reviewed and permitted at the municipal level. MassDEP proposes to eliminate this duplicative approval, which will save scarce MassDEP review time while simplifying the process for project proponents. MassDEP’s experience indicates that MassDEP rarely overturns the decision of the local permitting authority (local Board of Health). MassDEP will continue to be a resource to local Boards of Health to consult on particularly complex projects, and can issue guidance documents on specific topics of interest. In addition, in those cases where there are particularly sensitive resources at issue, or where the project is unusually complex, MassDEP’s existing regulations allow it to intervene in the local permitting process and MassDEP plans to use this existing mechanism to ensure proper oversight of particularly sensitive cases. (See 310 CMR 15.003(2)(e), allowing MassDEP to require direct approval from MassDEP in cases where necessary to protect public health, safety, welfare and the environment).

### 14. Wastewater: Improved Compliance Program for Groundwater Discharges of Sanitary Wastewater

Based on recent assessments of its groundwater discharger inspection program, MassDEP has found that routine annual inspections of groundwater discharge facilities do not correlate well with compliance (i.e., inspections performed do not always disclose non-compliance demonstrated by Discharge Monitoring Report [DMR] review). Rather than continuing with this under-performing method of compliance inspections, MassDEP proposes to reduce the current levels of routinely-selected inspections to instead focus inspection resources on facilities based on actual compliance data. Facilities will be targeted for inspections based on DMR reviews, complaints received and ongoing compliance/enforcement issues. In addition, MassDEP will continue to inspect the entire universe of permittees every five years, as planned under the agency’s five-year rotating watershed basin schedule. MassDEP believes this approach will result in increased compliance with less direct staff time from DEP. To further bolster the ongoing oversight of facilities that discharge sanitary wastewater, all permittees would be required to hire a qualified professional to conduct a periodic compliance/structural assessment of the facility based on the design life of the facility and expected need for repair and/or replacement. This assessment could include process evaluations as well and MassDEP will work with stakeholders to establish a workable system for third-party facility assessments by establishment of standardized review and inspection protocols and establishment of minimum qualifications for the certifying professionals. MassDEP will also conduct compliance audits to ensure the effectiveness of the third-party facility assessments, and would retain a monitoring and enforcement role with respect to all data and facilities submissions.

## **C. Solid Waste**

### **15. Solid Waste: Permit Streamlining and Certifications for Transfer Stations and Special Waste Approvals**

MassDEP proposes to shift its current management and oversight of solid waste facilities to focus agency resources on those specific sectors/facilities where there is the greatest need for oversight while finding alternate methods to permit activities that are increasing environmental benefits and simplifying processes for permittees. Specific initiatives will include, but not be limited to:

- Streamline permitting for all transfer stations by combining the existing separate Authorization to Construct (ATC) and Authorization to Operate (ATO) permits into one permit that would be issued before construction starts. This permit process will require public notice and a public comment period as required by the current solid waste regulations. Facilities would file periodic certifications about their compliance with the permit thereafter.
- Streamline agency reviews for transfer station permit modifications by requiring notification and certification for most modifications, except ones that substantially increase tonnage. Modifications that result in large tonnage increases would continue to require MassDEP review and issuance of a new or amended permit.
- Convert to a permit-by-rule the current requirement for a site-specific Post Closure Use Permit for photo-voltaic renewable energy projects located on property that is site-assigned property that is ancillary to a landfill (i.e., projects not located on the waste mass).
- Narrow and clarify the “Special Waste” applicability, thus eliminating the need for many written reviews and approvals.

### **16. Solid Waste: Third Party Compliance Assurance for Some Facilities and Activities**

MassDEP will expand upon the solid waste program’s existing use of 3<sup>rd</sup> party inspections, reviews, and/or audits to allow the agency to focus its staff on highest priority activities that will benefit environmental compliance. This proposal will allow MassDEP to require certain facilities or activities to undergo review more frequently than MassDEP’s resources currently allow. These 3<sup>rd</sup> party reviews can identify any compliance issues for prompt correction and can also identify conditions that require action to avoid violations. Among other things, MassDEP anticipates establishing specific measures to establish 3<sup>rd</sup> party eligibility and competence criteria as well as reporting requirements. MassDEP will work with stakeholders to design a program that creates incentives to identify and promptly correct issues, and supports high compliance levels. MassDEP will establish specific procedures or mechanisms to ensure the quality and integrity of work performed by 3<sup>rd</sup> parties.

## **D. Waste Site Cleanup**

### **17. Site Cleanup: Simplify Activity & Use Limitations (AULs)**

MassDEP proposes to streamline the required elements for the deed restrictions put in place to limit future use of properties where some amount of residual contamination remains after

cleanup (known as AULs). This effort will likely involve development of simplified forms and streamlined public notice procedures to facilitate simpler and more understandable forms of restrictions, and it will also reduce time spent on review and approval by MassDEP. This effort will also focus on increasing availability of on-line information about recorded use limitations. This will save agency review time and will provide improved public access to AUL data.

18. Site Cleanup: Eliminate Tier I Permits and/or Streamline Tier Classification, Revise Numerical Ranking System (NRS)

MassDEP proposes to streamline or potentially eliminate the numeric ranking system, Tier Classification and permitting processes. Reducing time spent processing tier classifications/permits or NRS scores can help MassDEP focus on priority cleanup sites while improving efficiencies for the Potentially Responsible Parties which could help speed cleanup efforts. MassDEP believes that other mechanisms are already in place to address the relative priority or significance of sites (e.g. by focusing on exposure pathways, imminent hazards, etc.) without need for tier classifications/permits. DEP will therefore explore whether elements of this process can be streamlined or eliminated where functionally duplicative of other aspects of the regulatory-mandated site cleanup process (known as the Massachusetts Contingency Plan [MCP]).

**E. Other areas**

19. Many Programs: Streamlining and Self-Certification for Certain Permit Renewals

MassDEP proposes to streamline certain permit renewals by several methods that will save time for applicants and MassDEP staff in certain prescribed circumstances. For example, MassDEP will seek to provide for presumptive approvals where the applicant can certify that there have not been changes to either the project or applicable regulatory standards since its initial approval and where the project has maintained its compliance status. This change has the potential to save DEP staff resources spent reviewing renewal applications that are identical to the previously-approved project applications and where regulatory standards have not substantively changed in the interim period. MassDEP will review required permit renewals agency-wide to determine which categories of permits this option should be applicable to, and whether there are other streamlining measures that can be undertaken. This option will only be available to projects/parties that are currently in compliance and MassDEP will retain the ability to audit and take enforcement with respect to the submitted certifications. MassDEP has initially identified its approvals for land application of sludge and septage, as well as its sanitary wastewater groundwater discharge permits as good candidates for application streamlining or presumptive approval. MassDEP will continue to explore other good candidates for this permit renewal streamlining.

20. Asbestos Abatement Program Improvements

MassDEP proposes to shift its current management and oversight of asbestos abatement activities to focus limited agency resources on the highest priority asbestos matters. This reform will increase environmental and public health benefits while simplifying the regulatory process for stakeholders. Specific initiatives will include, but not be limited to:

- Reduce the regulatory burden on homeowners by creating more flexible requirements for abatement of non-friable asbestos materials (e.g. asbestos-containing tiles) at owner-occupied residences;
- Provide greater flexibility to businesses and institutions by establishing operation and maintenance standards to deal with small scale asbestos abatement projects that currently require individual notifications; and
- Provide greater clarity and a mechanism for businesses and institutions to receive alternate work practice permits in situations where traditional asbestos abatement is not feasible.

To continue sufficient oversight of this important health-protective program, MassDEP will focus its inspections on highly sensitive asbestos removal projects where the risk of exposure is the greatest and work with municipal building departments to conduct outreach assistance. In addition, to ensure homeowners keep themselves and others safe from asbestos fiber exposure, MassDEP will publish and make available guidance materials to assist homeowners to understand the health and regulatory issues associated with asbestos removal. In development of these program improvements, MassDEP will coordinate closely with the Massachusetts Department of Labor Standards which licenses asbestos abatement contractors.

#### 21. Streamline Rideshare Reporting Requirements

In response to comments indicating that the Massachusetts Rideshare Regulation (310 CMR 7.16) could be streamlined and improved, MassDEP will convene Rideshare stakeholders including MassCommute, the association of Massachusetts Transportation Management Associations (TMAs), TMA representatives, MassDOT, and others to identify opportunities to streamline the employer reporting and survey requirements under the program. The goal is to have a streamlined employer reporting process in place for the next employer reporting deadline of December 31, 2012. Stakeholders will be convened in the first quarter of 2012 to begin this process. To the extent that changes requiring regulation amendments are identified, these would be developed in a second phase of this streamlining project.

#### VI. Need for Additional Reform.

While MassDEP believes that the package of reforms listed above will allow it to make substantial progress towards aligning our permitting and compliance activities with the level of resources we currently have available, we recognize that there may be a need for more substantial reforms in order to address longer-term agency/program sustainability issues. MassDEP therefore will continue to work closely with stakeholders to explore additional regulatory reforms that might be feasible over a longer period of time. In particular, MassDEP will work with the Massachusetts Association of Conservation Commissions (MACC) to explore more broad-based changes to the way wetlands alterations are permitted. Similarly, MassDEP will use the experiences gained in moving towards third-party inspections in the solid waste context (see #16 listed above) to evaluate whether to make similar changes to other types of facility inspections. MassDEP will also explore whether to shift some aspects of its solid waste regulatory program to the M.G.L.c. 21E licensed site professional model. Each of these efforts

will involve close coordination with impacted stakeholders and are likely to require an extended time period to discuss, review and evaluate potential reforms.

## VII. Time Savings Expected and Plan for Reinvestment.

Most of the individual reforms presented in this document result in relatively modest savings for MassDEP on an individual basis. However, when taken collectively as a package of measures, MassDEP believes that it will be able to shift significant personnel resources away from routine or duplicative activities to more pressing concerns. In particular, MassDEP will use resources saved to: improve oversight and compliance assurance among the highest-risk regulated activities; ensure timely permitting as the economy recovers and permit applications increase; boost enforcement, technical assistance and outreach—particularly for municipalities; and better meet the agency’s federal obligations to impose stricter air quality regulations and to monitor and assess surface waters in the Commonwealth.

In combination with the Commissioner’s efforts at agency restructuring and information technology upgrades, these regulatory reform efforts will allow MassDEP to make significant progress towards living within—and continuing to succeed within—its current staffing levels.